IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

26.06.2023
SL No.22
Court No. 551
Ali

FMAT 1122 of 2014
IA No:CAN/1/2015 (Old No:CAN/6992/2015)
CAN/2/2017 (Old No:CAN/10535/2017)

Smt. Buni Ruidas & Anr.
Vs.
The Oriental Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy
...for the appellants-claimants.

Mr. Sanjoy Paul
Ms. Jaita Ghosh
...for the insurance Co.

The instant appeal is preferred against the judgment and award dated 31st March, passed by Motor Accident Claims Tribunal cum Additional District Judge, 2nd Court, Assansol, Burdwan in M.A.C. Case no. 13 of 2012/53 of 2012.

Only single point is involved in this appeal.

The learned tribunal has awarded the compensation in favour of the claimants assessing the income of the deceased to be Rs.3,000/- per month. The appellants are before this appellate court on the ground that the assessment of learned tribunal in respect of income of the deceased should be at least Rs.4,000/- per month not Rs. 3,000/- per month and the award must carry the future prospect and general damages as ordered by the Hon'ble Apex Court in the judgment of **Pranay Sethi.**

Learned advocate for the appellants submitted before this court that the deceased was in occupation of service under Gagan Ferrotech Limited. His monthly income was stated in the claim application to be Rs.5,500/-. The bunch of Salary Slip was produced before the learned tribunal. P.W.-3 was adduced before the learned tribunal who proved the Salary Slip still then. Learned tribunal has not believed the Salary Slip on the ground that they may have prepared for the purpose of instant claim application.

Learned advocate for the appellants further submitted before this court that the claimants have produced the income proof documents but the learned court below has erroneously disbelieved the same. He further argued that the learned court below should be considered the income of the deceased to be at least Rs.4,000/-.

Learned advocate for the insurance company raised strong objection and submitted before this court that there is no error in the judgment passed by the learned tribunal.

He further argued that the amount of compensation awarded by the tribunal was just and proper. So, the instant appeal is liable to be dismissed.

Heard the learned advocate perused the materials on record also perused the paper books. It

appears that the claimants have produced a bunch of documents which was marked as Exhibit before the learned tribunal; the documents appear to be the Salary Slip of the employees of Gagan Ferrotech Limited, P.W.-3 appeared as a General Manage. In the cross examination by the insurance company P.W.-3 could not produce any document regarding his status as General Manager. Learned tribunal has considered the statement of P.W.-3, entirely and of the view that the documents were manufacturing for the purpose of the claim application.

I have perused the document marked as Exhibit-8 collectively. It appears that the documents were produced after filing of claim application. It further appears that the person appears as P.W.-3 could not produce any documents regarding his status.

In this particular case, claimant has preferred the application under Section 166 of the Motor Vehicles Act for getting just and proper compensation. The accident was proved due to rash and negligent driving of the offending vehicle. Claim petition stated the occupation of the deceased being an employee of Gagan Ferrotech Limited. At the time of evidence PW-3 appears and produced the salary documents. There is no contrary pleading or proof to contradict the Exhibut-8. It is well settled principle by virtue of law laid down by Hon'ble Apex Court in

Sarala Verma that strict proof as required under Civil and Criminal proceeding is not required in a claim proceeding under Motor Vehicles Act.

It is immaterial, whether the documents were filed alongwith the claim application or not; the pleadings was successfully corroborated by both oral and documentary evidence before the learned tribunal regarding the income of the deceased. Thus, I am of the view that the observation of learned tribunal regarding disbelieving the documentary evidences of claimants is completely erroneous.

Considering the aspects, I am of the view, after observing the Exhibit-8 that the income of the deceased shall not be less than Rs.4,000/- per months. Hence, it appears that the award of the learned tribunal need be modified as under.

I also perused the multiplier of this case was assessed by the learned tribunal as 15 but considering the age of the deceased (42) years and as per the observation of Hon'ble Apex Court passed in **Sarla Verma** the applicable multiplier should be 14.

Learned advocate for the appellants has handed over a draft assessment of compensation which appears to me helpful. Thus, the just and proper compensation of this case is as follows:-

Calculation of compensation

1.Monthly Income be assessed as.....Rs.4,000/-

2.Annual Income be assessed as
...(Rs.4,000/- X 12)..... Rs.48,000/-
3. 25% future prospect .....Rs 12,000/
4. Total loss of yearly income Rs.60,000/-

5. 1/3rd personal leaving expenses.....Rs20,000/
Rs.40,000/-

5. Multiplier 14 as per age of 42 years
(Rs.40,000/-X 14).....Rs.5,60,000/-
6. General Damages.....Rs.70,000/-
Rs6,30,000/-

7.Withdrawn
..... Rs.3,69,500/-
Balance.....Rs.2,60,500/-

The claimants has received the compensation amount of Rs.3,69,500/- alongwith interest.

The insurance company is directed to pay the balance amount of Rs. 2,60,500/- which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. April 10, 2012.

The respondent-insurance company is directed to pay the compensation vide equal two account payee cheque in the name of the claimants through the office of the learned tribunal within 50 days from the date of passing of the order.

The instant FMAT is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)